

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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Feb 10, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

BILLY EDWARD TOYCEN,

8 Plaintiff,

9 v.

10 UNITED STATES DISTRICT COURT  
11 and YAKIMA COUNTY SUPERIOR  
12 COURT,

Defendants.

No. 1:22-cv-3178-MKD

ORDER DENYING LEAVE TO  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING ACTION

13 By Order filed December 28, 2022, the Court directed Plaintiff Billy Edward  
14 Toycen who had filed this *pro se* civil rights complaint while incarcerated at the  
15 Yakima County Jail, ECF No. 1, to show cause why his application to proceed *in*  
16 *forma pauperis* should be granted. ECF No. 6 at 4. In the alternative, Plaintiff was  
17 instructed that he may pay the \$402.00 fee (\$350.00 filing fee, plus \$52.00  
18 administrative fee) for this action. *Id.* Plaintiff was cautioned that failure to do  
19 either would be construed as his consent to the dismissal of this action without  
20 prejudice for failure to comply with the filing fee requirements of 28 U.S.C. §

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND  
DISMISSING ACTION - 1

1 1914. *Id.*

2 A copy of that Order was mailed to the residential address Plaintiff provided  
3 in Yakima, Washington, on December 28, 2022. ECF No. 6. Plaintiff did not  
4 comply with the Court's directives and has filed nothing further in this action. He  
5 did not refute the Court's finding that he had filed three or more actions that were  
6 dismissed as frivolous, malicious, or for failure to state a claim upon which relief  
7 may be granted. *See id.* at 3.

8 The Court finds that Plaintiff has failed to demonstrate that he is eligible to  
9 proceed *in forma pauperis* under 28 U.S.C. § 1915(g), or that he was under  
10 imminent danger of serious physical injury when he filed his Complaint. *See*  
11 *Andrews v. Cervantes*, 493 F.3d 1047, 1055-56 (9th Cir. 2007) (discussing  
12 imminent danger exception to three-strikes rule). Therefore, Plaintiff has lost the  
13 privilege of filing this lawsuit *in forma pauperis*.

14 Although granted the opportunity to do so, Plaintiff did not pay the \$402.00  
15 filing fee to commence this action. As a result, the Court dismisses this case  
16 without prejudice for failure to comply with the filing fee requirements of 28  
17 U.S.C. § 1914.

18 Therefore, **IT IS ORDERED:**

19 1. Plaintiff's application to proceed *in forma pauperis*, **ECF No. 2**, is  
20 **DENIED.**

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND  
DISMISSING ACTION - 2

2. This action is **DISMISSED WITHOUT PREJUDICE** for non-payment of the filing fee as required by 28 U.S.C. § 1914.

3. The Court certifies that any appeal of this dismissal would not be taken in good faith.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order, enter judgment, provide copies to Plaintiff at his last known address, and **CLOSE** the file.

**DATED** February 10, 2023.

*s/Mary K. Dimke*  
MARY K. DIMKE  
UNITED STATES DISTRICT JUDGE